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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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SHEPHERD et al. v. DARLING et al.

March 15, 1917. Rehearing Denied March 28, 1917.

[91 S.E. 737.]

**1. Executors and Administrators (§ 137\*)—Trusts (§ 189\*)—Duty of Care of Executor and Trustee.**—An executor and trustee, in selling his testator's property, was required merely to exercise the care of a reasonably prudent man conducting his own affairs.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. § 701; Trusts, Cent. Dig. §§ 240, 241, 244.\* 5 Va.-W. Va. Enc. Dig. 524.]

**2. Executors and Administrators (§ 127\*)—Sale of Property—Power under Will.**—Where testator bequeathed all his estate to his executors in trust to be sold as soon after his death as in their opinion it could be done with greatest profit, the surviving executor had power to sell testator's property without an order of the court.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 527-530.\* 5 Va.-W. Va. Enc. Dig. 553.]

**3. Executors and Administrators (§ 82\*)—Authorization of Sale of Property—Protection of Executor.**—Testator's executor, authorized to sell the property without an order of court, had the right, notwithstanding the power given him by the will, to go into a court of equity for advice and instruction, and was fully protected by the court's order under which he acted in selling, when he sought the court's advice in good faith.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. § 335\* 5 Va.-W. Va. Enc. Dig. 564.]

**4. Partnership (§ 121\*)—Sale of Property to Partner—Suit to Set Aside—Burden of Proof.**—In suit brought by the heirs of a deceased partner against his surviving executor and another partner, who purchased the partnership property from the executor, to set aside the purchase on the ground of undue influence and fraud, the burden of proof was not on the purchasing partner to show affirmatively that he made disclosure as to the business, with which he

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

was the more familiar, and acted in good faith, even if he and the executor were partners in the business.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 183-184½.\* 10 Va.-W. Va. Enc. Dig. 843.]

**5. Partnership (§ 121\*)—Sale of Property to Partner—Burden of Purchaser.**—Where a partner purchased the business from the surviving executor of another partner only after the latter sought the independent advice of a court of equity, the fact satisfied any burden upon the purchasing partner to show his good faith and disclosure of the condition of the business, with which he was more familiar, in suit by the heirs of the deceased partner against him to set aside the sale.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 183½-184½.\* 10 Va.-W. Va. Enc. Dig. 843.]

Appeal from Circuit Court, Elizabeth City County.

Suit by Mary McMenamin Shepherd and another against Henry L. Schmelz, executor and trustee of James W. McMenamin, deceased, Frank W. Darling, and John McMenamin. From the decree, plaintiffs and the last-named defendant appeal. Affirmed.

*Allan D. Jones*, of Newport News, for appellants.

*Jones & Woodward*, *R. M. Lett*, and *J. W. Read*, all of Newport News, for appellees.

## **SHENANDOAH VALLEY LOAN & TRUST CO. v. MURRAY.**

March 15, 1917.

[91 S. E. 740.]

**1. Highways (§ 160 (2)\*)—Obstructions—Injuries—Sufficiency of Evidence.**—Where a telephone wire was taut before defendant's employees painted the house to which it was attached, but sagged immediately thereafter, the jury was warranted in finding defendant's employees caused such sagging.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 438.\* 12 Va.-W. Va. Enc. Dig. 927.]

**2. Highways (§ 153\*)—Sagging Wire—Landowner's Liability.**—A landowner must exercise reasonable care to prevent a telephone wire partly on his premises from sagging where it crosses a public road.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 299, 417, 419.\* 12 Va.-W. Va. Enc. Dig. 912.]

**3. Highways (§ 160 (3)\*)—Landowner's Negligence—Sufficiency of Evidence.**—Evidence that a sagging telephone wire was caused by

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.